

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2004-0010
)	
Quality Rail Service, Inc.)	CONSENT AGREEMENT
2801 Youngfield Street, Suite 240)	
Golden, CO 80401)	
)	
Grand Forks, ND Facility)	
)	
Respondent.)	

AUTHORITY

1. _____ This Consent Agreement is entered into between Complainant United States Environmental Protection Agency Region 8 (“EPA”) and Quality Rail Service, Inc., ("Respondent") pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“the Act”), 33 U.S.C. § 1321(b)(6)(B)(ii), which authorizes the EPA Administrator to issue civil penalties for violations of CWA §§ 311(b)(3) and 311(j), 33 U.S.C. §§ 1321(b)(3) and 1321(j), as amended by the Oil Pollution Act Amendments of 1990. This authority has been properly delegated to the undersigned EPA officials. Complainant and Respondent (hereafter referred to collectively as “the Parties”), by their undersigned representatives, hereby consent and agree as follows.

FACTUAL AND PROCEDURAL BACKGROUND

2. On November 18, 2003, Complainant issued Respondent an Administrative

Complaint and Notice of Opportunity for Hearing (“Complaint”) under section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for alleged violations of sections 311(b)(3) and 311(j) of the Act, 33 U.S.C. §§ 1321(b)(3) and 1321(j), and the oil pollution prevention regulations set forth at 40 C.F.R. part 112, at Respondent’s bulk fuel facility located at 1703 Dyke Avenue, Grand Forks, North Dakota. The Complaint proposed a civil penalty for the alleged violations.

3. Respondent admits the jurisdictional allegations of the Complaint and the Consent Agreement.

4. Respondent neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

5. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

6. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon Complainant and Respondent, Respondent’s officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 9 has been paid. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

7. Respondent is in current compliance with the Act and the implementing

regulations set forth at 40 C.F.R. part 112.

8. Pursuant to § 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA determined that an appropriate civil penalty to settle this action is in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500) after considering the seriousness of the violations, the economic benefit to the violator, the degree of culpability, any other penalty for the same incident, any prior history, Respondent's efforts to mitigate the effects of a discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

9. Respondent consents and agrees to pay the amount of Seventeen Thousand Five Hundred Dollars (\$17,500) to resolve the violations alleged in the Complaint.

TERMS OF SETTLEMENT

10. Respondent consents to the issuance of the Consent Agreement and for the purposes of settlement to the payment of the above-cited civil penalty.

11. Respondent shall pay the total civil penalty in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500) by remitting a corporate, cashier's or certified check, payable to the order of the "Oil Spill Liability Trust Fund, within thirty (30) days after Respondent's receipt of a signed final order in this matter, to:

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

The check shall reference the Respondent's name and address, and the EPA docket number of this action.

12. Respondent agrees to mail a copy of the check simultaneously to the following:

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
999 18th Street, Suite 300
Denver, CO 80202-2466

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

13. Respondent agrees and consents that if it fails to pay the penalty amount within the time frame set forth in paragraph 11 above, EPA may assess interest and a late charge of fifteen dollars (\$15.00) after the first 30-day period and for each subsequent 30-day period, or any portion thereof, until full payment is made.

14. The penalty specified in paragraph 9 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

GENERAL PROVISIONS

15. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

16. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

17. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its
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authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of this Consent Agreement.

18. Respondent's undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.

19. The Parties agree to bear their own costs and attorneys fees in connection with this matter.

20. The Parties agree to forward this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.

21. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and upon full payment of the agreed-upon amount by the Respondent, shall constitute a complete and full settlement of the specific violation alleged in the Complaint.

SO CONSENTED AND AGREED TO:

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 6/1/04

By: **SIGNED**
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6/1/04

By: **SIGNED**
Elisabeth Evans, Director

Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 6.1.04

By: **SIGNED**
~~Amy Swanson, Enforcement Attorney~~
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

QUALITY RAIL SERVICE, INC.,
Respondent.

Date: May 21, 2004

By: **SIGNED**
L. Danny Moore, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **QUALITY RAIL SERVICE, INC.**, **DOCKET NO.: CWA-08-2004-0010** was filed with the Regional Hearing Clerk on June 2, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on June 2, 2004 to:

Fred D. Wells, Esq.
The Wells Law Firm, P.C.
28000 Meadow drive, Suite 108
Evergreen, CO 80439

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

and hand-carried to:

Honorable Susan L. Biro
Chief, Administrative Law Judge (1900L)
U. S. Environmental Protection Agency
1200 Pennsylvania NW
Washington, DC 20460

June 2, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON JUNE 2, 2004.**

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